Federal Register
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Wednesday, May 14, 1980

Presidential Documents

Title 3—

The President

Proclamation 4757 of May 12, 1980

Flag Day and National Flag Week 1980

By the President of the United States of America

A Proclamation

Two hundred and five years ago, in June of 1775, the first distinctive American flags to be used in battle were hoisted above the Colonial defenses at the Battle of Bunker Hill. One of these flags was an adaptation of the British "Blue Ensign." The other was an entirely new design. Both, however, bore one device in common—the pine tree—chosen to symbolize the colonists' efforts to wrest their land from the forests.

As the colonists moved toward a final break with the mother country, other flags with more pointed messages began to appear. Several featured rattlesnakes, symbolizing vigilance and deadly striking power, and were emblazoned with the legends "Liberty or Death" and "Don't Tread on Me."

On January 1, 1776, the Grand Union flag was raised over Washington's Continental Army headquarters, displaying not only the British crosses of St. George and St. Andrew but also thirteen red and white stripes for the thirteen American colonies. That same year, the Bennington flag was unfurled, with thirteen stars, thirteen stripes and the number "76."

But it was not until the following year that the Continental Congress chose a flag that more tellingly expressed the unity and resolve of the Colonials who had banded together to seek independence. On June 14, 1777, two years after the Battle of Bunker Hill, the delegates voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

Today, thirty-seven stars and two centuries later, the flag chosen by the Continental Congress in Philadelphia continues to be our national flag and to symbolize our shared commitment to freedom and equality.

To commemorate the adoption of our flag, the Congress, by a joint resolution of August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue annually a proclamation calling for its observance. The Congress also requested the President, by joint resolution of June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and to call upon all citizens of the United States to display the flag on those days.

NOW, THEREFORE, I, JIMMY CARTER, do hereby designate the week beginning June 8, 1980, as National Flag Week, and I direct the appropriate officials of the Government to display the flag on all Government buildings during the week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

To focus the attention of the American people on their country's character, heritage and future well-being, the Congress has also, by joint resolution of June 13, 1975, set aside the 21 days from Flag Day through Independence Day as a period to honor America (89 Stat. 211).

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

[FR Doc. 80-15046
Filed 5-13-80; 11:23 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 95
Wednesday, May 14, 1980

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the passage of the Inspector General Act of 1978, Pub. L. 95–452, approved October 12, 1978.

EFFECTIVE DATE: May 14, 1980.

FOR FURTHER INFORMATION CONTACT: L. L. Free, Acting Assistant Inspector General for Administration, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. (202–447–6915).

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978 established an independent Office of Inspector General in the Department of Agriculture to be headed by an Inspector General. Under the provisions of the Act, the Inspector General is under the general supervision of the Secretary and derives direct responsibilities and authorities from the Act. Passage of the Act necessitates amending the delegations of authority from the Secretary to the Inspector General and other general officers and agency heads. Since this rule relates to internal agency management, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, and the Director of Economics, Policy Analysis and Budget

1. Section 2.25 is amended by revising paragraphs (c)(2) and (d)(1), and by adding a new paragraph (e)(11) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) *Related to management.* * * *

(2) Maintain, review, and update departmental delegations of authority.

* * * * *

(d) *Related to management services.*

(1) Provides management support services for the Secretary of Agriculture and for the general officers of the Department, except the Inspector General. As used herein, such management support services shall include:

* * * * *

(e) *Related to personnel.* * * *

(11) The provisions of paragraphs (9) (xiv) thru (xx) of this Section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Sections 2.33 and 2.34 are revoked and the following substituted in lieu thereof:

§ 2.33 Delegations of authority to the Inspector General.

The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(a) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(b) Provide for physical protection of the Secretary.

(c) Promulgate departmental policies, standards, techniques, and procedures, and represent the Department in maintaining the security of physical facilities, self-protection, and warden systems.

(d) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app., including:

(1) Conduct and supervise audits and investigations relating to programs and operations of the Department.

(2) Provide leadership, coordination and policy recommendations to promote economy, efficiency and effectiveness and to prevent and detect fraud and abuse in the administration of the Department's programs and operations.

(3) Keep the Secretary and the Congress fully and currently informed about problems and deficiencies and the necessity for and progress of corrective actions in the administration of the Department's programs and operations.

(4) Make such investigations and reports relating to the administration of programs and operations of the Department as are in the judgment of the Inspector General, necessary or desirable.

(5) Review existing and proposed legislation and regulations and make recommendations to the Secretary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or in the prevention and detection of fraud and abuse in the programs and operations of the Department.

(6) Have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the Department which relate to programs and operations for which the Inspector General has responsibility.

(7) Report expeditiously to the Attorney General any matter where there are reasonable grounds to believe there has been a violation of Federal criminal law.

(8) Issue subpenas to other than Federal agencies for the production of information, documents, reports, answers, records, accounts, papers and other data and documentary evidence

necessary in the performance of functions assigned by the Act.

(9) Receive and investigate complaints or information from any Department employees concerning possible violations of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific dangers to the public health and safety.

(10) Select, appoint, and employ necessary officers and employees in the Office of Inspector General in accordance with laws and regulations governing the civil service, including an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations.

(11) Obtain services as authorized by Section 3109 of Title 5, United States Code.

(12) Enter into contracts and other arrangements for audits, studies, analyses and other services with public agencies and private persons and make such payments as may be necessary to carry out the provisions of the Act to the extent and in such amounts as may be provided in an appropriation act.

§ 2.34 Reservations of authority.

The following authority is reserved to the Secretary of Agriculture:

(a) Approving the implementation in OIG of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.75 is amended by revising paragraphs (a) (4) and (15) to read as follows:

§ 2.75 Director, Office of Operations and Finance.

(a) *Delegations.* * * *

(4) Provide procurement, property management, space management, communications, messenger, paperwork management, and related services (with authority to take actions required by law or regulation to perform such services) for: * * *

(ii) The general officers of the Department, except the Inspector General.

* * * * *

(15) Provide budget, accounting, and related financial management services, with authority to take action required by law or regulation to provide such services for working capital funds and general appropriated funds and trust funds for: * * *

(ii) The general officers of the Department, except the Inspector General;

4. Section 2.77 is amended by revising paragraph (a)(2) to read as follows:

§ 2.77 Director, Management Staff.

(a) *Delegation.* * * *

(2) Maintain, review, and update departmental delegations of authority.

* * * * *

5. Section 2.78 is amended by adding a new paragraph (a)(15) to read as follows:

§ 2.78 Director, Office of Personnel.

(a) *Delegations.* * * *

(15) The provisions of paragraph (a)(9) (xiv) thru (xx) of this section shall not apply to positions in, or applicants for positions in, the Office of Inspector General.

* * * * *

(5 U.S.C. 301; Reorganization Plan No. 2 of 1953; Pub. L. 95–452, 92 Stat. 1101, 5 U.S.C. app.)

Dated: May 7, 1980.

For Subparts C & D:

Bob Bergland,

Secretary of Agriculture.

Dated: May 7, 1980.

For Subpart J:

Joan S. Wallace,

Assistant Secretary for Administration.

[FR Doc. 80–14572 Filed 5–13–80; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

Navel Oranges Grown in Arizona and Designated Part of California; Amendment of Size Requirements

7 CFR Part 907

[Navel Orange Reg. 471, Amdt. 3]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment relaxes the maximum diameter (size) requirement applicable to shipments of navel oranges by permitting shipment of navel oranges not larger than 3.84 inches in diameter for the period May 9, 1980, through July 17, 1980. The current regulation requires that such oranges be not larger than 3.70 inches in diameter. This action recognizes current market demand for larger sizes of such fruit and is consistent with the size composition of the remaining crop in the interest of growers and consumers.

EFFECTIVE DATE: May 9, 1980, through July 17, 1980.

FOR FURTHER INFORMATION CONTACT:

Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* (1) This regulation is issued under marketing agreement and order No. 907, both as amended (7 CFR Part 907) regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation of the committee established under the marketing agreement and order, and upon other available information. It is found that the regulation of shipments of California-Arizona navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The relaxation of size requirements, herein specified, for shipments of California-Arizona navel oranges reflects the Department's appraisal of the current and prospective supply and market demand conditions for such sizes of fruit. This action would increase supplies available to meet current and prospective demand.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers, and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on the handling of California-Arizona navel oranges. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handlers have been appraised of such provisions and effective time.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 30, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

Accordingly, paragraph (a) in § 907.771, Navel Orange Regulation 471 (44 FR 75376, 77133; 45 FR 9890) should be and is amended to read as follows:

§ 907.771 Navel Orange Regulation 471.

(a) During the period May 9, 1980, through July 17, 1980, no handler shall handle any navel oranges grown in Districts 1, 2, 3, or 4 which are of a size larger than 3.84 inches in diameter or which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of oranges in any type of container may measure larger than 3.84 inches in diameter and not to exceed 5 percent, by count, of oranges in any type of container may measure smaller than 2.32 inches in diameter.

* * * * *

Dated: May 8, 1980, to become effective May 9, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-14841 Filed 5-13-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations Governing Price Support for the 1978 and Subsequent Crop Years, Amdt. 1]

General Regulations Governing Price Support for the 1978 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule is to amend the regulation which permits the reoffering as security or repledging as collateral for a new loan any grain or similarly handled commodity that has been previously so mortgaged or pledged. The amendment is needed in order to correct a conflict in provisions of the present regulations wherein § 1421.4(f) enables some producers to obtain loans for longer periods of time than allowed in § 1421.6(c). Producers who obtain new loans just before the close of the commodity loan availability period can in effect extend their loans up to an additional 9 months. This rule would limit the maturity date of new loans to that of the original loan. The amendment applies to 1979 and subsequent crops.

EFFECTIVE DATE: Date of filing with the Director, Office of the Federal Register. (May 13, 1980)

FOR FURTHER INFORMATION CONTACT: Harold Jamison, Price Support and Loan Division, ASCS, USDA, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7973. This final rule is an operating procedure implementing provisions of the various commodity loan programs for which impact analyses have been prepared and are available upon request from Ray Voelkel, Director, Impact Analysis and Public Participation Staff, USDA, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-7865.

SUPPLEMENTAL INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant." On Friday, November 23, 1979, a notice of proposed rulemaking was published in the **Federal Register** (44 FR 67134) announcing that the Secretary of Agriculture proposed to amend and issue regulations relative to reoffering as security or repledging as collateral for a new loan any grain or similarly handled commodity that has been previously so mortgaged or pledged.

No comments were received concerning this proposed amendment.

Final Rule

Accordingly, the regulation at 7 CFR Part 1421 is amended by revising § 1421.4(f) to read as follows:

§ 1421.4 Eligibility requirements.

* * * * *

(f) *Redeemed loan collateral.* A producer may, before the final date for obtaining a loan on a commodity, reoffer as security or repledge as collateral for a new loan any commodity that has been previously so mortgaged or pledged. Such loan shall have the same maturity date as the original loan.

* * * * *

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 105A, 107A, 201, 301, 401, 405, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444c, 1445b, 1446, 1447, 1421, 1425))

Signed in Washington, D.C. on May 5, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-14826 Filed 5-13-80; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1425

Cooperative Marketing Associations: Eligibility Requirements for Price Support, Amendment 3

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR Part 1425 which set forth the eligibility requirements with which cooperative marketing associations must comply in order to participate in authorized price support programs. The amendment clarifies the regulations as such regulations pertain to voting rights, pooling of commodities, adjustment of inventory for dispositions, definition of a member, and volume of member business. This clarification will help to assure a consistent understanding by cooperatives of the eligibility requirements for price support.

EFFECTIVE DATE: May 14, 1980.

FOR FURTHER INFORMATION CONTACT: Charlie B. Robbins, ASCS, (202) 447-4634, P.O. Box 2415, Washington, D.C. 20013. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Charlie B. Robbins.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant". On Monday, May 14, 1979, a notice of proposed rulemaking was published in the **Federal Register** (44 FR 27997) announcing that the Commodity Credit Corporation was considering amending 7 CFR Part 1425, Cooperative Marketing Associations, Eligibility Requirements for Price Support, to clarify the regulations as such regulations pertain to a number of eligibility requirements of cooperative marketing associations for price support. Specifically, the following changes were proposed with respect to those requirements:

A. *Voting rights.* To specify that only active members are authorized to vote on cooperative matters.

B. *Pooling of Commodities.* To clarify that commodities acquired by a cooperative for marketing must be pooled.

C. *Adjustment of inventory.* To require that pool inventories of price supported commodities must be adjusted at the time such commodity is shipped or withdrawn from inventory for processing.

D. *Definition of member.* To define a member as one who has met the requirements of membership and is entitled to all membership rights.

E. *Member business.* To provide that when determining price support eligibility, processed products purchased from other processors or merchandisers will not be considered in

determining the volume of member business.

Comments were solicited on the proposed rule and interested persons were given sixty (60) days to express their views.

Discussion of Comments

Nine comments were received. Of these, one favored all proposed changes, one suggested an addition to the proposed definition of a member and seven opposed one or more of the proposed changes.

Comments Supporting the Proposed Changes

One respondent supporting the proposed changes indicated that the clarification would reduce the likelihood of misinterpretation of the regulations and would, therefore, reduce the amount of time spent by cooperatives in obtaining clarification of the regulations. Another respondent generally supporting the proposed changes suggested that the proposed definition of a member of a cooperative be expanded to require that a member be an active member. This suggestion will not be adopted because it would result in the requirement that the membership of a member who becomes inactive be terminated. The regulations governing the eligibility of cooperatives for price support were not promulgated with the intention of depriving cooperatives of the right to receive price support because certain of its members may be inactive.

Comments Opposing the Proposed Changes

One respondent, a proprietary firm, opposed any program that would permit cooperative marketing associations to participate in price support programs while not allowing independent grain elevator operators to participate in such programs. The proposed changes did not affect the basic coverage of the regulations. Accordingly, the comment is determined to be unresponsive.

Two respondents opposed the proposed change in § 1425.5 (f) of the regulations which would provide that each active member of a cooperative shall have a single vote in the affairs of a cooperative participating in a price support program. They contend that if they (the cooperative) limited the voting to only active members of the cooperative, such action would be tantamount to imposing a further restriction on the stock, may be contrary to State law, and may subject the cooperative to legal challenge in the state courts. Upon review of this contention, it has been determined that an exception to the proposed change in § 1425.5 (f) of the regulations will be permitted where, prior to the effective date of this final rule, a cooperative has issued voting stock to other than active members in accordance with its articles of incorporation or bylaws and the applicable State law concerning member or stockholder voting rights.

Four comments objected to removal of the phrase "whether pooled or not" appearing in paragraph (d) of § 1425.13 of the regulations. Three respondents contend that removal of the phrase appears to be in conflict with longstanding "pooling" practices of Form G cotton cooperatives and could be applied in such a manner as to make it extremely difficult, if not impossible, for cotton cooperatives to continue their successful marketing operations.

Removal of the phrase will have no impact on the application of the regulation requirements as they pertain to pooling. The regulations have always been interpreted as requiring pooling and provide for a cooperative to operate as many different pools as it deems necessary in order to market the commodity acquired from its members. The other respondent who objected to removal of the phrase from § 1425.13 (d) of the regulations contends that such action will only create additional confusion concerning a particular method of marketing. However, this contention is erroneous since the regulations governing eligibility of cooperative marketing associations for price support do not permit a cooperative to participate in the price support program without operating one or more pools. Furthermore, the phrase is confusing by implying that pooling is not required.

Three of the respondents objected to the proposed changes in § 1425.17 (b) of the regulations concerning adjustment of inventory. However, they did not comment with respect to the proposed change. Instead, one respondent cooperative chose this means as a vehicle to offer arguments with respect to its present operations that are governed by other provisions of the regulations. Another respondent, a processing cooperative, contended that the proposed change would require that a determination be made as to the eligibility status of the commodity applied to each sale. However, it should be noted that the current provision of the regulations requires that each sale be identified as to eligibility status. The proposed change is needed to clarify the point in time when inventory adjustments are to be made.

All comments received have been considered in connection with this final rule. After giving careful consideration to those comments, it has been determined that the contentions opposing the proposal presented insufficient reasons for not making the proposed changes.

Final Rule

Accordingly, the regulations at 7 CFR Part 1425 are amended to read as follows:

1. Paragraphs (e) and (f) of § 1425.5 are amended as follows:

§ 1425.5 Charter and bylaw provisions.

* * * * *

(e) *Balloting.* Election of directors, delegates and officers shall be by balloting when there are two or more nominees for a position to be filled or more nominees than there are positions to be filled, as applicable.

(f) *Voting Rights.* Each active member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member, except that the Executive Vice President, CCC, may in his discretion approve some other voting method which in his opinion will adequately protect the interests of the active members of the cooperative. Any approved cooperative which has issued, prior to the effective date of this amendment, voting stock to persons other than active members as permitted by its articles of incorporation or bylaws and applicable State law shall be exempt, as long as such stock is outstanding, from the "active" member restriction with respect to voting rights as provided for in this paragraph.

2. Section 1425.7(c) of the regulations is amended to read as follows:

§ 1425.7 Operations.

* * * * *

(c) *Authorized.* The charter or bylaws of the cooperative acquiring the marketing service and the marketing agreement with its members contain necessary authority to enter into the agreement.

* * * * *

3. Section 1425.11 of the regulations is amended to read as follows:

§ 1425.11 Member business.

If price support is sought for a particular crop of a commodity, not less than 80 percent of such crop of the commodity that is acquired by or delivered to the cooperative for marketing must be produced by its members or by members of its member cooperatives. However, the Executive Vice President, CCC, may, for a period of two years or such lesser period of time as he determines appropriate,

authorize a cooperative applying for initial approval to acquire or receive for marketing from its members a smaller quantity of such crop that 80 percent, if that quantity has a value greater than the value of the quantity acquired or received from nonmembers for marketing and if the cooperative establishes to the satisfaction of the Executive Vice President, CCC, that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of the members of the cooperative. Purchase of commodities from CCC and processed products from other processors or merchandisers shall not be considered in determining the volume of member business.

4. Section 1425.13(d) of the regulations is amended to read as follows:

§ 1425.13 Eligible commodity and pooling.

* * * * *

(d) *Commodity requirements.* The commodity offered for price support must:

* * * * *

5. Section 1425.17(b) of the regulations is amended to read as follows:

§ 1425.17 Records maintained.

* * * * *

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity disposed of, the date sold, the date shipped and the price received in the following manner:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted when the commodity is withdrawn from inventory and is processed.

(2) *Commodities not processed.* The commodity shall be allocated to an eligible pool, an ineligible pool, or both eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

The commodity shall be allocated to eligible or ineligible pools or a combination of eligible and ineligible pools in the above manner until the entire inventory in a particular pool is depleted.

6. Section 1425.21 is amended by redesignating paragraph (b) to read paragraph (c) and adding a new paragraph (b) which reads as follows:

§ 1425.21 Definitions.

* * * * *

(b) *Member.* The term "member" shall mean a person who has met all of the requirements as specified in the articles of incorporation and/or bylaws, including full payment of the required membership stock or fees, either in cash or earned equity credits, is accepted by the cooperative and is entitled to all membership rights including voting and holding office.

(c) *Active member.* * * *

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 105A, 107A, 201, 203, 301, 401, 63 Stat. 1051, as amended (7 U.S.C., 1441, 1444(f), 1444c, 1445b, 1446d, 1447, 1421 (a)))

Signed at Washington, D.C., on May 7, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-14801 Filed 5-13-80; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Misadministration Reporting Requirements

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations to require its licensees to: (1) keep records of all misadministrations of radioactive material; (2) promptly report therapy misadministrations to the NRC, the referring physician, and the patient or the patient's responsible relative (or guardian); and (3) report diagnostic misadministrations quarterly to NRC.

EFFECTIVE DATE: November 10, 1980.

Note.—NRC has submitted this rule to the Comptroller General for review under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the rule becomes effective reflects inclusion of the 45-day period that the statute allows for this review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Edward Podolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-443-5860).

SUPPLEMENTARY INFORMATION: On July 7, 1978, NRC published in the **Federal Register** (43 FR 29297) a proposed rule on the misadministration of radioactive material to patients. The proposed § 35.33 would have required medical licensees to do three things:

(1) Keep records of all misadministrations for 5 years;

(2) Promptly report all therapy misadministrations and those diagnostic misadministrations that could cause a clinically detectable adverse effect to: NRC, the referring physician, and the patient or a responsible relative (unless the referring physician stated that the information would harm them); and

(3) Follow the prompt report with a written report to NRC and the patient or responsible relative within 15 days.

In the proposed rule, a misadministration was defined as the administration of:

(1) A radiopharmaceutical or radiation from a source other than the one intended;

(2) A radiopharmaceutical or radiation to the wrong patient;

(3) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(4) A diagnostic dose of a radiopharmaceutical differing from the prescribed dose by more than 20 percent; or

(5) A therapeutic dose of a radiopharmaceutical or exposure from a radiation source such that the total dose or exposure differs from the prescribed dose or exposure by more than 10 percent.

The public was invited to submit written comments and suggestions on the proposed rule. The proposed rule was mailed to all medical licensees, about 30 professional and public-interest groups, and 2,000 state and county medical societies.

Comments on Proposed Rule

The Commission received 150 letters commenting on the proposed rule. Copies of these letters, a summary and analysis of the comments, and the value/impact analysis supporting the final rule are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. Single copies of the summary and analysis of the comments or value/impact analysis may be obtained from Edward Podolak at the above address.

Ninety percent of the comments were opposed to the rule, most citing it as an unprecedented intrusion into medical practice. Basically, the commenters were opposed to misadministration reporting to NRC where reports would be open to public scrutiny, and misadministration reporting to patients which they felt would cause "undue alarm" and "unwarranted malpractice suits." Many commenters offered helpful suggestions which were incorporated into the final rule as explained below under *"Summary of Major Changes in the Final Rule."*

Many commenters questioned the need for a misadministration reporting rule. They cited the low number of

reported misadminstrations. They stated that misadministrations of radioactive material were less frequent than misadministrations of other drugs or types of therapy. And they noted that there are no similar reporting requirements in medical practice.

The Commission's purpose in requiring misadministration reports to NRC is to identify their causes in order to correct them and prevent their recurrence. The Commission can do this by notifying other licensees if there is a possibility that they could make the same errors. The commission can also change its regulations to prevent specific errors. The significance of a diagnostic misadministration goes beyond the unnecessary radiation exposure if it results in misdiagnosis. Apparently isolated incidents at individual medical institutions could reveal a generic problem when compared nationally.

Examples of rule changes resulting from misadministrations are: a rule requiring annual calibration of teletherapy units (44 FR 1722), and a rule requiring radiation surveys of patients following removal of implants (43 FR 55345).

The Commission does not know the entire extent of misadministrations of radioactive material. In 1976 NRC investigated an incident where 400 therapy patients had received radiation doses exceeding the prescribed doses by as much as 41 percent. In 1977 NRC received seven reports of misadministrations ranging from minor misadministrations to a serious teletherapy overexposure. In 1978 NRC received eleven reports of misadministrations, one of them a serious misadministration of four Ir–192 seeds that were left in a patient. In 1979 NRC has received a single report of a misadministration; colloidal P–32 was administered instead of soluble P–32. The Commission does not know what fraction of the actual incidence of misadministrations these reports represent. However, whenever there has been a serious misadministration, the Commission has been able to act to help prevent recurrence by issuing notices or orders to licensees or through rulemaking.

The Commission recognizes that its misadministration reporting requirement may be unique to medical practice. The Commission also recognizes that the misadministration of radiopharmaceuticals and radiation from sealed sources may be less frequent than the misadministration of other drugs or forms of therapy, because the radiopharmaceutical doses and radiation doses can be measured before administration to patients. However, the Commission believes that the misadministration recordkeeping and reporting requirement is necessary to protect patients.

Many commenters were concerned about the privacy of patients' records when misadministrations are reported to a third party such as NRC.

The final rule states that the patient's name should not be reported to NRC. The reports of misadministrations would be available for public review but without information that would lead to identification of the patient.

The vast majority of the commenters consider the proposed rule as a serious intrusion into the physician-patient relationship. They contend that the proposed rule is an intrusion of a regulatory agency into the care of a patient without assuming responsibility for that care. Many commenters pointed out that the misadministration reporting requirement was unique in medical practice and noted that NRC regulations did not apply to X-rays, accelerator or radium therapy, and accelerator-produced radiopharmaceuticals.

The Commission recognizes the intrusion into the physician-patient relationship in the sense that the rule does affect, to a limited degree, the nature of the physician's obligation to his or her patient—it imposes in certain circumstances an obligation on the physician to report information to the patient and the NRC. For many in the health professions, this limited involvement may be understood, rightly or wrongly, as foreshadowing some greater degree of Governmental involvement or as symbolizing some general movement toward more regulation of the profession.

The Commission does not believe, however, that this limited intrusion warrants abandoning the rule. Some physicians do support the rule—the medical profession is not unanimous that the rule would constitute an unwarranted intrusion into the physician-patient relationship. The "physician-patient" relationship is a concept that was developed to advance the needs of the patient. The relationship involves duties of reasonable care and skill, confidentiality, and good faith owed by the physician to the patient. Nothing in the rule would detract from these duties. Thus, in a strict sense, the rule would not interfere with the relationship.

It is true that no similar reporting requirements are attached to use of X-rays, accelerator or radium therapy, or accelerator-produced isotopes. However, this is the direct result of limitations in NRC's regulatory authority. At present, unless Congress should expand NRC's authority, the NRC must operate under the presumption that Congress intended that a disproportionate degree of Federal regulatory control be exercised over nuclear materials as opposed to these other sources of radiation.

In many respects the adverse comments track those received by the Food and Drug Administration (FDA) in response to a request for comments to help FDA formulate a policy on labeling of prescription drug products to promote patient understanding of the nature and effects of the drugs prescribed for them. In a notice of proposed rulemaking (44 FR 40016, July 6, 1979), the FDA rejected the assertion that mandatory patient labeling would constitute an unwarranted interference in the physician-patient relationship, pointing out among other things that a patient has a right to know about a drug's benefits, risks, and directions for use.

Also, in a January 1979 report (EMD–79–16), the General Accounting Office (GAO) stated:

> In our view, requiring medical licensees to report misadministrations to NRC is not an intrusion into medical practice. This is clearly consistent with NRC regulatory responsibilities and a necessary part of an effective nuclear medicine regulatory program. Without this kind of feedback on incidents affecting the public health and safety, NRC cannot be sure it is adequately regulating the possession and use of nuclear materials in medical practice.

Many commenters were concerned that the proposed rule, particularly the patient reporting requirement, would invite unwarranted malpractice suits and thereby boost medical costs. Some of these commenters suggested that the rule would lead to covering up misadministrations to avoid liability.

The Commission believes that the requirement in the final rule to report therapy misadministrations to patients or a responsible relative is important. Patients have a right to know when they have been involved in a serious misadministration, unless this information would be harmful to them. NRC has parallel requirements for licensee reports to workers on occupational overexposures. Also, there is a trend in Federal legislation that recognizes the right of individuals to know information about themselves which is contained in the records of institutions both inside and outside of the Federal sector. Examples are: the Privacy Act of 1974, which set rules for Federal Agencies' recordkeeping; the Fair Credit Reporting Act and related acts, which gave consumers the right to know information about themselves contained in the records of credit-

reporting bureaus; and the Family Education Rights and Privacy Act, which gave students the right to see personal records held by educational institutions. Also, in April 1979, the President sent the proposed "Privacy of Medical Information Act" to Congress, and President said:

> The "Privacy of Medical Information Act" is being submitted to you today. It establishes privacy protections for information maintained by almost all medical institutions. The Act will give individuals the right to see their own medical records. If direct access may harm the patient, the Act provide that access may be provided through an intermediary. This legislation allows the individual to ensure that the information maintained as part of his medical care relationship is accurate, timely and relevant to that care. Such accuracy is of increasing importance because medical information is used to affect employment and collection of insurance and other social benefits. * * *

Regarding the comment that the rule would invite malpractice suits and thereby boost medical costs, this may well be true. The amount of this increase is not known. In response to NRC query, the National Association of Insurance Brokers replied:

> It is simply beyond our competence to quantify the effect on medical malpractice rates of your proposed rule. * * * that the proposed change would have an adverse effect on rates seems indisputable, since the doctors would be required, in a sense, to prepare testimony against themselves. We frankly doubt that anyone can gauge the likely effect of such a rule * * *

Regarding the suggestion that the rule would lead to covering up misadministrations to avoid liability, the Commission does not believe that physicians would willfully disregard the rule. Moreover, there is nothing in the rule that would in any way modify the legal rules governing malpractice suits arising out of reported misadministrations.

A majority of the commenters who opposed the rule were opposed to the requirement for reporting diagnostic misadministrations to patients. They stated that most misadministrations of diagnostic radiopharmaceuticals would not harm the patient. They also stated that the definition of a diagnostic misadministration as an error greater than 20 percent would unduly alarm the patient because it was too low. They stated that the recommended dosage ranges in the drug labeling spanned factors of two and greater. They further stated that the standard dosages vary between institutions by as much as 100 percent. They also stated that this definition discriminated against short half-life radiopharmaceuticals which give a smaller radiation dose to the patient.

The proposed rule had a threshold for reporting diagnostic misadministrations. The threshold was not clear. The proposed rule required reporting of all therapy misadministrations and those diagnostic misadministrations that could cause a "clinically detectable" adverse effect on the patient.

The staff agrees that the definition of a diagnostic misadministration as a 20 percent error is too low. That level was chosen originally because it was within the state-of-the-art for radiopharmaceutical measurement and the Commission was concerned that the limit for a diagnostic misadministration would be construed as good practice. The Commission recognizes that there are factors, such as patient scheduling, which are not errors but could cause the patient to receive a dose differing from the prescribed dose by more than 20 percent without affecting the effectiveness of the test. The final rule defines a diagnostic misadministration, in part, as that differing from the prescribed dose by more than 50 percent. At this limit of 50 percent: (1) an error has obviously occurred and (2) 50 percent over or under the prescribed dose can clearly compromise the effectiveness of the diagnostic procedure.

Some commenters objected to the absence of a definition for a "clinically detectable adverse effect" in the threshold for reporting diagnostic misadministrations. Others questioned who would make that determination. Others objected to the physician having too much leeway in making the determination. Still others complained that, without guidelines, they would have difficulty in making the determination.

At the proposed rule stage, the Commission believed that "clinically detectable" was a term well understood in medicine. According to some commenters, this is not the case. The Commission recognizes that the diagnosis of an "adverse effect" may in one case be based on a single dramatic symptom, while in another case it may be based on a number of individually minor deviations from the normal for that patient. Because of this and because adverse effects may be delayed in time, the term "clinically detectable adverse effect" is a moving target. Therefore, the Commission is abandoning this term and the threshold. The final rule will require reporting of all diagnostic misadministrations to NRC.

Several commenters questioned whether extravasation is considered a misadministration.

Extravasation is the infiltration of injected fluid into the tissue surrounding a vein or artery. Extravasation frequently occurs in otherwise normal intravenous or intraarterial injections. It is virtually impossible to avoid. Therefore, the Commission does not consider extravasation to be a misadministration.

Some commenters questioned whether they would have to measure the activity in a syringe before and after the injection in order to determine if a misadministration has occurred.

Misadministrations of a radiopharmaceutical is defined as a percentage error from the prescribed dose. It is necessary to measure the activity prior to injection and then inject the contents of the syringe. It is not necessary to measure the residual activity in the syringe.

One commenter suggested that licensees be required to keep records of misadministrations for 50 years. Instead of the proposed 5 years, because of the long latency period for radiation-induced cancers. For the same reason, another commenter suggested that the records be maintained for 30 years.

The Commission agrees that there are compelling reasons for insuring that the records of misadministrations should be maintained for a period of time longer than the five years as originally proposed. At the same time it is not yet clear for what specific length of time NRC should require these records to be maintained by the licensee.

As an alternative to requiring licensees to maintain misadministration records for any specific length of time, the final rule requires that licensees shall preserve misadministration records until the Commission authorizes disposition. This approach is consistent with Part 20.401 of NRC's regulations which requires that NRC licensees maintain and preserve radiation exposure records for monitored personnel until the Commission authorizes disposition.

Under the provisions of section 208 of the Energy Reorganization Act of 1974, the Commission reports each quarter to the Congress on any abnormal occurrences involving facilities and activities regulated by the NRC. An abnormal occurrence is defined in section 208 as an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. The Commission published a policy statement on abnormal occurrence reporting in the **Federal Register** (42 FR

10950). Those misadministrations which the Commission determines meet the criteria for abnormal occurrence reporting will be published in the quarterly "Report to Congress on Abnormal Occurrences." In the past, teletherapy overexposures have been reported to Congress in this manner.

Summary of Major Changes in the Final Rule

The final rule was organized into separate sections, specifically §§ 35.41 through 35.45, to make the requirements easier to understand.

Several commenter's suggestions were incorporated into the final rule. As noted above, the term "could cause a clinically detectable adverse effect" in the threshold for reporting diagnostic misadministrations has been abandoned in the final rule. Instead, all diagnostic misadministrations will be reported quarterly to NRC only. These reports of diagnostic misadministrations are to be in letter format and postmarked not later than 10 days following the calendar quarters ending in March, June, September, and December.

The Commission encourages licensees to report diagnostic misadministrations to patients but does not believe that the risk of a diagnostic misadministration warrants Federal intervention in this decision. Therefore, the Commission will not require licensees to report diagnostic misadministrations to the patient or relative (or guardian).

In the final rule, only therapy misadministrations are required to be reported to the referring physician and the patient or responsible relative. There are two changes regarding notification of the patient or responsible relative in § 35.42(a). First, a parenthetical "(or guardian)" was added to "responsible relative" to cover persons who do not have relatives. Second, now the referring physicians, if they wish, may inform the patient of the misadministration.

In the final rule, the limit for a diagnostic misadministration in § 35.41 has been raised to errors greater than 50 percent. Many commenters pointed out that the recommended dosages in radiopharmaceutical labeling cover ranges of up to a factor of 10 and that, comparing nuclear medicine departments, there is often a 100% or greater difference in the standard dosages for the same procedure. The Commission did not raise the limit of error for a diagnostic misadministration above the 50% level because this level begins to affect the quality of the diagnostic procedures. A poor quality diagnostic procedure could require a re-take or could result in a misdiagnosis.

In The final rule, the definition of a therapy misadministration in § 35.41 (e) and (f) distinguishes between radiopharmaceutical therapy and sealed source therapy. For sealed source therapy, the new definition recognizes that the therapist often adjusts the dose during treatment. Also, the new definition recognizes that the radiation dose in sealed source therapy is calculated as a function of dose rate, time, and treatment geometry, and is not usually measured directly. These changes resulted from several comments from radiation therapists.

Final Rule

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 35, are published as a document subject to codification.

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

New §§ 35.41 through 35.45 are added to 10 CFR Part 35 to read as follows:

Sec.
35.41 Definition of a misadministration.
35.42 Reports of therapy misadministrations.
35.43 Reports of diagnostic misadministrations.
35.44 Records of all misadministrations.
35.45 Rights and duties of licensees.

Authority: Sections 81, 161 b. and o., Pub. L. 83-703, 68 Stat. 935, 948 b. and o., 42 U.S.C. 2111, 2201 b. and o.; Section 201, Pub. L. 93-438, 88 Stat. 1242, 42 U.S.C. 5841.

Misadministration Reports and Records

§ 35.41 Definition of a misadministration.

For this part, misadministration means the administration of:

(a) A radiopharmaceutical or radiation from a sealed source other than the one intended;

(b) A radiopharmaceuted or radiation to the wrong patient;

(c) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(d) A diagnostic dose of a radiopharmaceutical differing from the prescribed dose by more than 50 percent;

(e) A therapeutic dose of a radiopharmaceutical differing from the prescribed dose by more than 10 percent; or

(f) A therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10 percent.

§ 35.42 Reports of therapy misadministrations.

(a) *Immediate telephone report.* When a misadministration involves any therapy procedure, the licensee shall notify, by telephone only, the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian), *unless* the referring physician personally informs the licensee either that he will inform the patient or that, in his medical judgment, telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other, respectively. These notifications shall be made within 24 hours after the licensee discovers the misadministration. (If the referring physician or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee shall not delay medical care for the patient because of this.)

(b) *Written report.* Within 15 days after the initial therapy misadministration report to NRC, the licensee shall report, in writing, to the NRC Regional Office initially telephoned and to the refering physician, and furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under paragraph (a) of this section. The written report shall include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report shall not include the patient's name, or other information which could lead to identification of the patient.

§ 35.43 Reports of diagnostic misadministrations.

When a misadministration involves a diagnostic procedure, the licensee shall notify, in writing, the referring physician and the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. Licensee reports of diagnostic misadministrations are due within 10 days after the end of the calendar quarters (defined by March, June, September, and December) in which they occur. These written reports

shall include the licensee's name; the referring physician's name, a description of the event; the effect on the patient; and the action taken to prevent recurrence. The report should not include the patient's name or other information which could lead to identification of the patient.

§ 35.44 Records of all misadministrations.

Each licensee shall maintain for Commission inspection, records of all misadministrations of radiopharmaceuticals or radiation from teletherapy or brachytherapy sources. These records shall contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's refering physician), the patient's social security number, a brief description of the event, the effect on the patient, and the action taken to prevent recurrence. These records shall be preserved until the Commission authorizes their disposition.

§ 35.45 Rights and duties of licensees.

Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees and physicians in relation to each other, patient or responsible relatives (or guardians).

Dated at Washington, D.C., this 7th day of May 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-14623 Filed 5-13-80; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0292]

Electronic Fund Transfers; Documentation of Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending § 205.9(a)(3) of Regulation E, which implements the Electronic Fund Transfer Act, to exempt point-of-sale (POS) transfers from the requirement to identify, on the terminal receipt, the type of account accessed. The exemption is limited to POS transfers in which the access device involved can access only one particular account at point of sale.

EFFECTIVE DATE: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Dolores S. Smith, Section Chief, or John C. Wood, Attorney (202-452-2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist (202-452-2584), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Explanation of amendment.* Regulation E requires that at the time an electronic fund transfer is initiated at an electronic terminal, the financial institution make available to the consumer a receipt containing certain information about the transfer. Section 205.9(a)(3) requires that the receipt identify the type of account accessed (for example, checking or savings). It has come to the Board's attention that compliance with this requirement is impracticable in the case of debit cards used in interchange point-of-sale (POS) systems. Cards used in such systems contain no indication of the type of account that will be accessed.

The options for disclosing the type of account, if the requirement remained in place, appear impracticable. First, store clerks could ask customers what type of account is being accessed, and then manually note the information on the receipt. The difficulty here is that the clerk may fail to perform the procedure or that the customer for privacy reasons may prefer not to divulge the information. Second, debit cards could be encoded with a symbol indicating the type of account to which they relate. This option, however, would necessitate the reissuance of all debit cards now in circulation and the replacement of existing stocks of sale slips (so as to add an explanation of the code). Finally, information of account type might be obtained for each POS transfer via the authorization network, but this again would require major reprogramming and place an unnecessary new burden on the network.

It also appears that a disclosure of type of account would be of little value to the cardholder in these circumstances. The cards in question can access only one account of the consumer when used at POS terminals. The consumer already knows which account that is. A consumer signing up for the service indicates to the financial institution the particular deposit account to be accessed when the card is used in a POS transaction.

For the reasons stated above, the Board is amending § 205.9(a)(3) by adding a sentence to footnote 3. The effect is that the requirement to identify on the terminal receipt the type of account accessed will not apply in POS transfers where the access device used can access only one account. If the access device can access more than one account when used at a different type of facility (for example, in automated teller machines), the exemption will nevertheless be available at point of sale. On the other hand, the exemption will apply only to POS transfers. It will not be available, for example, in automated teller machine transfers, even if the access device can access only one account in those transfers.

Note also that the word "account" as used in the amendment refers only to accounts as defined in Regulation E, i.e., to consumer asset accounts. Thus, if a consumer can use a card at a POS terminal either to debit an asset account or to obtain credit on an open end credit account, the exemption would nevertheless apply.

The exemption becomes effective on May 10, 1980, the date on which § 205.9(a)(3) goes into effect. This action is taken in order to avoid unnecessary harm to financial institutions that would be subject to risk of civil liability if they continue to provide this service, and to consumers who might be deprived of a beneficial service if financial institutions and merchants ceased handling POS transfers. The Board finds that the notice, public procedure, and deferral of effective date provisions of 5 U.S.C. 553(b) and (d) would be impracticable and contrary to the public interest. For the same reasons, the expanded rulemaking procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), will not be followed in connection with this proceeding.

(2) *Economic impact analysis.* Section 205.9(a)(3) is amended to provide that, when only one of a consumer's accounts at a financial institution can be accessed by an access device at point of sale, the POS documentation need not indicate the type of account accessed. The Act requires that the documentation identify the account to or from which funds are transferred. The regulation specifies that the account has to be identified by type; this provision is designed to enable consumers to determine that the correct account was in fact debited.

Bank card associations have pointed out that interchange networks are not capable of providing information on account type at the time of the transfer. Furthemore, the major interchange networks allow access devices to access only one account, so that the account type is not useful information. Costs of redesigning interchange network